

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KIM W. YANG, GEORGE J. JUNGINGER,
RAYMOND G. MOCKRIDGE and ROBERT C. PEARCE III

Appeal No. 96-0228
Application 08/028,103¹

ON BRIEF

Before KIMLIN, JOHN D. SMITH and WEIFFENBACH, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-13, all the claims in the present application. Claim 1 is illustrative:

1. A pesticide formulation comprising a water settable powder mixed with a pesticidally effective amount of at least one active ingredient in a water soluble receptacle.

¹ Application for patent filed March 8, 1993.

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In the rejection of the appealed claims, the examiner relies upon the following references:

Strong	1,457,321	June 5, 1923
Clarke, Jr. (Clarke)	4,876,091	Oct. 24, 1989
Sjogren	4,971,796	Nov. 20, 1990
Gouge et al. (Gouge)	5,224,601	July 6, 1993

(filed Oct. 23, 1992)

Appellants' claimed invention is directed to a pesticide formulation in a water soluble receptacle. The formulation comprises a water settable powder and a pesticide. When the water soluble receptacle containing the pesticide formulation is placed in water, the formulation sets up in situ into the final form.

Appealed claims 1 and 3-7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Sjogren. Claims 1, 2 and 6-13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Strong. Appealed claims 1-13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Clarke in view of Gouge.

Upon careful consideration of the opposing arguments presented on appeal, we will not sustain the examiner's rejections.

We consider first the § 102 rejections over either Sjogren or Strong. We agree with the examiner that both references disclose a pesticide formulation in a water soluble receptacle, since page 3 of appellants' specification defines a water soluble

container as a pouch or capsule. However, appellants are correct in their contention that neither reference discloses a pesticide formulation comprising a water settable powder. While the examiner states at page 3 of the Answer that Example 1 of Sjogren discloses crosslinked collagen as a water settable powder, it is clear from the reference at column 7, lines 20 et seq., that crosslinked collagen is a form of collagen that is already set by crosslinking and rendered less water soluble. Sjogren does not describe a pesticide formulation that sets up upon contact with water.

Regarding the § 102(b) rejection over Strong, appellants accurately describe the reference as disclosing a pesticide formulation that has been hardened and which does not contain a water settable powder. The plaster of Paris of the reference is composited with a binder, such as molasses or syrup, and Strong expressly teaches that the plaster of Paris is readily hardened when acted upon by the moisture of the molasses (page 1, lines 85-87).

Accordingly, it can be seen that neither Sjogren nor Strong describes all the features of the claimed invention and, thereby, cannot support a rejection under 35 U.S.C. § 102.

We now turn to the rejection of the appealed claims under 35 U.S.C. § 103 over Clarke in view of Gouge. Although the

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examiner recognizes that Clarke does not disclose the claimed water soluble receptacle, the examiner errs in finding that Clarke describes a pesticide formulation comprising a water settable powder. Clarke discloses that the pesticide, plaster of Paris and water are uniformly mixed to provide a pellet which uniformly releases the pesticide, and that the pellet, after setting via the reaction of plaster of Paris and water, has essentially no free water (see Abstract). Manifestly, the pesticide-containing cast briquets of Clarke do not comprise the claimed water settable powder. Since Gouge does not disclose that the water soluble receptacle contains a water settable powder, i.e., neither the first component nor the second component of the pesticide is disclosed as comprising a water settable powder, the combined teachings of Clarke and Gouge do not result in the claimed pesticide formulation. Consequently, the collective teachings of Clarke and Gouge do not factually support a finding of obviousness within the meaning of 35 U.S.C. § 103.

In conclusion, based on the foregoing, we are constrained to reverse the examiner's rejections.

REVERSED

EDWARD C. KIMLIN)

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JOHN D. SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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CAMERON WEIFFENBACH)	
Administrative Patent Judge)	

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Allen E. Norris
Sandoz Agro, Inc.
Patent Dept.
975 California Ave.
Palo Alto, CA 94304-1104